

ORIGINAL



Lampert & O'Connor, P.C.

1750 K Street NW
Suite 600
Washington, DC 20006

EX PARTE OR LATE FILED

Linda L. Kent
kent@l-olaw.com

Tel 202/887-6230
Fax 202/887-6231

VIA HAND DELIVERY

August 23, 2002

EX PARTE

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

RECEIVED

AUG 23 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Oral *Ex Parte* Presentation
CC Docket No. 02-33

Dear Ms. Dortch:

On August 22, 2002, Steven Teplitz, Vice President and Associate General Counsel, AOL Time Warner Inc. ("AOL"), Donna N. Lampert and the undersigned, both of Lampert & O'Connor, P.C., met with Marsha MacBride, Chief of Staff, Christopher Libertelli, Legal Advisor and Jonathan Cody, Special Policy Advisor, Office of the Chairman, regarding the above referenced docket.

In the meeting, we discussed AOL's positions as presented in its Comments and Reply Comments filed May 3, 2002 and July 1, 2002 respectively in CC Docket No. 02-33. Specifically, we discussed today's regulatory, legal and business framework whereby consumers acquire DSL-based broadband Internet access services from Internet Service Providers ("ISPs") who are, in turn, wholesale ADSL customers of the incumbent local exchange carriers ("ILECs"). We also explained that the ILECs serve as the primary providers of wholesale transmission services used by the ISPs as an input to their broadband Internet access information services, offering over 95 percent of bulk DSL services. Because cable operators do not offer transmission services to ISPs, but rather offer an unregulated retail information service to end users, cable modem service provides no basis to alter the classification of ILEC wholesale broadband services as telecommunications services. We stressed that regulatory parity should not be viewed as an end in itself; instead the FCC should look at the impact on consumers of altering current requirements and thereby undermining the highly competitive environment for Internet access services that exists today.

We explained that AOL has relied on the regulatory framework found in the *Computer Inquiry* rules to ensure that it has non-discriminatory access to the underlying transmission

No. of Copies rec'd 012
List ABCDE

August 23, 2002

Page 2

services needed to reach consumers. There is no question that this framework has encouraged the development of an abundance of information services, features and functions provided by thousands of ISPs that are accessed via the wireline infrastructure. We explained that this framework remains relevant today to specify and provide certainty that its requirements will be met, thereby encouraging ISPs to continue to develop innovative and diverse information applications and to compete to provide their services to consumers. AOL firmly believes that by continuing to provide consumers with a diversity of information services, consumer demand for broadband will increase. We noted that ILECs still have the ability and incentive to discriminate against unaffiliated ISPs. If ILECs had no obligation to serve ISPs and chose not to do so, or favored their affiliated ISP such that it was impossible for unaffiliated ISPs to compete fairly, the information services that consumers value would diminish and ISP investment would decline. We urged the FCC to build upon the fundamental success of the *Computer Inquiry* framework and maintain its requirements that ILECs unbundle the underlying telecommunications transmission service and make it available to unaffiliated ISPs at just and reasonable rates and on nondiscriminatory terms and conditions.

We also noted that there was no evidence in the record that compliance with *Computer II* and *III* has inhibited ILEC broadband investment. The *Computer Inquiry* rules do not mandate what rates can be charged, only that rates be nondiscriminatory so that all ISPs, both affiliates and non-affiliates, have the same opportunity to compete. We explained that ILECs have considerable pricing flexibility and deregulation for ADSL services under the *Fifth Report and Order* adopted by the FCC in CC Docket No. 96-262. AOL pointed out that while updating and streamlining the *Computer Inquiry* rules to ensure that these rules effectively achieve the purpose for which they were instituted is in the public interest, enforcement of the rules must be enhanced.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, two copies of this Notice are being provided to you for inclusion in the public record in the above-captioned proceeding. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Linda L. Kent

Counsel for AOL Time Warner Inc.

cc: Marsha MacBride
Christopher Libertelli
Jonathan Cody